



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Navy--Request for
Reconsideration
File: B-228931.2
Date: April 7, 1988

DIGEST

Request for reconsideration is denied where agency fails to present evidence that original decision may have been based on legal or factual errors.

DECISION

The Department of the Navy requests reconsideration of our decision in Contract Services Company, Inc., B-228931, Dec. 29, 1987, 67 Comp. Gen. _____, 87-2 CPD ¶ 638, in which we sustained the protest of Contract Services Company, Inc. of the Navy's failure to award the firm a contract under invitation for bids (IFB) No. N62467-87-B-2736, issued as part of a cost comparison pursuant to Office of Management and Budget Circular A-76. We deny the request for reconsideration.

We sustained CSC's protest based on our finding that the Navy failed to include in its in-house estimate the cost of maintaining housing unit air conditioning and ventilation equipment, while CSC asserted it had factored more than \$900,000 for this work into its bid (enough to overcome the in-house cost advantage). The Navy claimed that CSC had erred in interpreting the IFB to include this work, but we found that the clear language of the IFB required the air conditioning maintenance work and that CSC therefore was not unreasonable in interpreting the IFB as requiring it and in factoring the cost of the work into its bid. Since the Navy's cost estimate thus was not based on the same statement of work as CSC's bid, contrary to fundamental principles of federal procurement, we recommended that the cost comparison be revised and that CSC be awarded a contract based on a reduction of its bid by the amount attributed to providing maintenance for family housing air conditioning.

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The Navy now asserts several new arguments for the first time, to the effect that CSC should not have been misled by the IFB read as a whole, and that CSC was not misled. Included is an argument that, irrespective of unclear IFB phraseology and misunderstandings regarding the scope of the work, the IFB contained historical workload data for service calls, which indicated how many total housing maintenance service calls the contractor should expect and the approximate value of each in both labor and material cost. The Navy concludes that, whether or not it was clear from the IFB that the contract scope was not intended to include housing air conditioning maintenance, the total housing maintenance workload required to be performed was clear, so that CSC's total bid and the Navy's cost estimate were based on the same workload information.

Based on the discussion in our original decision, it should be clear that we consider the Navy's reasoning under this argument to be unpersuasive. In this regard, we specifically recognized that CSC's proposed cost reasonably could have been based on CSC's assumption that the historical estimates did not include housing air conditioning maintenance since those services had been performed by contract rather than in-house. Under this view, even if CSC did generally rely on the estimates in figuring its cost, the firm reasonably could have then increased its cost to account for the air conditioning work. Under these circumstances, CSC's and the Navy's costs would not have been calculated on the same basis and, as we concluded in our decision, the cost comparison was faulty.

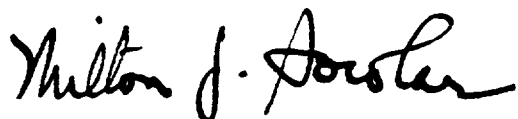
The Navy's argument that CSC was not misled (and did not really include housing air conditioning maintenance costs in its bid), is based on the fact that CSC became aware of the amount of the Navy's contract for this work after bid opening, and the fact that the annual amount CSC claims it costed for this air conditioning maintenance is similar to the Navy's contract amount. We find this argument speculative; there simply is no conclusive evidence in the record that CSC falsely asserted the amount by which it overstated its bid.

We note, furthermore, that since the arguments now raised by the Navy all are derived from information available to the Navy during our initial consideration of the protest, it is clear that the arguments could have and thus should have been raised at that time. See Newport News Shipbuilding and Dry Dock Company--Request for Reconsideration, B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428; Department of the Navy--Request for Reconsideration, B-220991.2, Dec. 30, 1985, 85-2 CPD ¶ 728.

The Navy also argues that, instead of recommending that CSC be awarded a contract based on its bid price less the amount included in its bid for housing air conditioning maintenance, we should have had the Navy increase its estimate by the amount of its current contract for that maintenance work; the Navy believes this will more accurately reflect the magnitude of the cost comparison deficiency. We disagree. First, this argument again challenges the amount CSC alleges it included for the air conditioning work, which the Navy never disputed during CSC's protest. Moreover, our recommendation was fashioned in this manner because, based on the protest record, we determined that CSC's cost was overstated, not that the Navy's estimate was understated. It remains our view that the most appropriate means of correcting this deficiency is to amend CSC's incorrect bid, not the Navy's accurate estimate.

The Navy's request for a conference is denied, as it would serve no useful purpose under our holding. See Neal & Company, Inc., B-228570.2, Jan. 5, 1988, 88-1 CPD ¶ 3.

As the Navy has presented no evidence that our original decision may have been factually or legally erroneous, the request for reconsideration is denied.



Acting Comptroller General
of the United States